

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

IN RE THE COMPLAINT AND PETITION
OF COSTAR SAILING, LLC, AS OWNER,
AND J&J YACHT SERVICES, LLC, AS
OWNER PRO HAC VICE/OPERATOR, OF
THE S/V CARPE AURA, HULL #:
FPA542531819 AND OFFICIAL NO. 1291579,

CASE NO. 3:21-cv-0059

Petitioners,

v.

EDWARD AND CINDY MOREA

Claimants and Third-Party Plaintiffs,

v.

ATLANTIC CRUISING YACHTS, LLC,
FOUNTAIN PAJOT, SA, AND
CONSTANTINE BAKAS,

Third-Party Defendants.

SECOND JOINT MOTION TO EXTEND CASE DEADLINES AND TRIAL DATE

Here come, the Parties, and hereby jointly move this Court to extend the case deadlines and trial date in the above captioned matter and adopt the Joint Proposed Revised Deadlines attached hereto as Exhibit A.¹ In support of this motion, the Parties assert the following:

1. This lawsuit involves personal injuries sustained by Claimant and Third-Party Plaintiff, Edward Morea (“Morea”), on April 16, 2021, when an explosion occurred while he was a passenger aboard the S/V Carpe Aura (“Carpe Aura”).

¹ Fountaine Pajot has filed motions to dismiss the Third-Party Complaint of Edward Morea and Cindy Morea and Atlantic Cruising Yachts, LLC’s cross-claims for lack of personal jurisdiction, pursuant to Fed. R. Civ. P. 12(b)(2). Those motions remain pending. Fountaine Pajot joins in this motion while reserving and without waiving its jurisdictional defenses and the aforementioned motions.

In Re J&J Yacht Services, et al. Civil No. 3:21-CV-0059

Second Joint Motion to Extend Case Deadlines and Trial Date

Page | 2

2. Petitioners, Costar and J&J Yacht Services, LLC, (“Petitioners”) filed a Petition for Limitation of Liability on July 13, 2021.

3. On October 20, 2021, Mr. Morea and his wife, Cindy Morea filed their Answer, and later, on April 14, 2022, their Consent Motion for Leave to File a Third-Party Complaint was granted.

4. On May 5, 2022, the Third-Party Complaint against Third-Party Defendants Atlantic Cruising Yachts, LLC, Fountaine Pajot, SA and Constantine Bakas was filed.

5. On May 18, 2023, the Court issued a Revised Trial Management Order (Doc. 137) granting the parties’ Joint Motion to Amend the Trial Management Oder.

6. Since May 18, 2023, the parties have been diligently engaged in taking depositions. Ten depositions have been taken. Counsel have traveled to St. Thomas, to New York twice, Annapolis, Maryland and Ashville, North Carolina. The Ashville North Carolina depositions had to be suspended because one of the counsel’s wife went into labor mid-deposition, with the deposition being concluded a few weeks later. Defendant Fountaine Pajo, the vessel manufacturer, flew in its corporate representative to New York for a Fed. R. Civ. P. 30(b)(6) deposition, in lieu of requiring counsel to travel to France. The parties were not able to take that deposition until October 11, 2023.

7. All fact witnesses, except one witness, a former employee of Petitioner, have been deposed. The witness, George Chapman, initially stated he would voluntarily appear for his deposition in St. Thomas, he failed to show and Morea’s process server’s attempt to serve him were not successful. Also, it may be necessary to reconvene the 30(b)(6) deposition of Fountaine Pajot (telephonically) to obtain further testimony that the witness who appeared in New York City was unable to provide. The parties are waiting to receive the transcript of that deposition to

In Re J&J Yacht Services, et al. Civil No. 3:21-CV-0059
Second Joint Motion to Extend Case Deadlines and Trial Date
Page | 3

determine whether or not further testimony will be needed. Fountaine Pajot has also reserved the right to object to the deposition being re-convened.

8. Additional time is needed for several other reasons as well. On June 2-3, 2021, a joint post-accident inspection of the vessel was conducted by representatives of Petitioner, Morea, and third-party defendant Fountain Pajot, although U.S. counsel for Fountaine Pajot was not yet engaged. At the inspection, components from the vessels were removed and transported to Florida for future inspection and analysis. The inspection was planned to be done after the deposition of Fountain Pajot. Unfortunately, Petitioner's liability expert Frank Silva who attended the June 2-3, 2021, vessel inspection was seriously injured recently and is recovering slowly; it appears that Petitioner will have to find a new expert. Further, because ACY was not a party or put on notice of a potential claim against it until the filing of the Third-Party Complaint, it did not have any representatives or experts present at the June 2021 joint inspection, nor has its experts been provided with an opportunity to inspect the artifacts removed from the vessel. A joint inspection of the artifacts is needed and being scheduled to be conducted hopefully before years end. In addition, once the inspection of the components is conducted, which may include scanning, certain expert testing may be required.

9. Morea has had extensive medical treatment. There are over 4,000 pages of medical records and total medical bills exceed \$2,193,000. The parties are attempting to work out stipulations as to the medical bill but are still premature. Morea resides in New Jersey, and it is difficult for him to travel, due to his injuries. Petitioners have indicated they would like to wait until they receive Morea's medical experts' reports prior to deciding whether they will conduct independent medical examinations ("IME"). This would be the most efficient way to proceed.

In Re J&J Yacht Services, et al. Civil No. 3:21-CV-0059

Second Joint Motion to Extend Case Deadlines and Trial Date

Page | 4

10. Morea was a high-earning sales executive with Cisco Systems. A significant portion of his earnings are commission based. Morea has returned to work, but because he can no longer travel for business, he reports that he was deemed not fit for duty for his current position and transferred to another job. It will be several months until we can determine what his commission earnings will be in the new position, so as to project loss of future earnings. This may also require expert reports from the parties.

11. The current Trial Schedule has the parties going to mediation prior to the expert disclosures. The parties believe that the case may have a much better chance of resolution if the mediation was held after exchange of expert reports, but prior to expert depositions.

12. Therefore, the Parties respectfully request that the current discovery and other case deadlines be extended as follows:

- a. Fact discovery is closed with the exception of taking the deposition of George Chapman, to be completed by March 15, 2024, and the potential continuation of the 30(b)(6) deposition of Fountaine Pajo, to be completed by December 29, 2023. Change the mediation deadline from November 15, 2023, to February 8, 2024.
- b. Disclosure of Burden of Proof Experts changed from December 1, 2023 to March 18, 2024.
- c. Disclosure of Responding Experts changed from January 15, 2024 to April 18, 2024.
- d. Expert discovery changed from March 1, 2024 to June 3, 2024.
- e. All dispositive and Daubert motions changed from April 16, 2024 to July 16, 2024.

In Re J&J Yacht Services, et al. Civil No. 3:21-CV-0059

Second Joint Motion to Extend Case Deadlines and Trial Date

Page | 5

- f. Assignment of new trial date reflective of the above requested extensions, with
all other pre-trial deadlines commensurate with the new trial date.

13. The Parties all join in this motion and the relief sought. No party will be prejudiced by the relief sought herein.

WHEREFORE, the Parties respectfully request that this Court grant the instant motion, enter an order endorsing the attached Propose Revised Scheduling Deadlines, and enter any additional relief that is fair and just.

RESPECTFULLY SUBMITTED
Tabak Mellusi & Shisha LLP

DATED: October 20, 2023,
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In Re J&J Yacht Services, et al. Civil No. 3:21-CV-0059
Second Joint Motion to Extend Case Deadlines and Trial Date
Page | 6

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following counsel:

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In Re J&J Yacht Services, et al. Civil No. 3:21-CV-0059

Second Joint Motion to Extend Case Deadlines and Trial Date

Page | 7

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